

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

UNITED STATES OF AMERICA

CIVIL ACTION NO. 06-1253

VERSUS

JUDGE S. MAURICE HICKS, JR.

BOBBY A. MCELWEE AND  
MINNIE CAROL CASON MCELWEE

MAGISTRATE JUDGE SHEMWELL

**MEMORANDUM RULING**

Before the Court is a Motion for Default Judgment (Record Document 8) filed by the Plaintiff, the United States of America. On November 1, 2006, the Clerk of Court issued a Notice of Motion Setting (Record Document 9) ordering that any opposing briefs be filed within fifteen calendar days, i.e., November 16, 2006. Defendant Bobby A. McElwee filed a letter response to the Motion for Default Judgment. See Record Document 10. Such response was postmarked November 17, 2006 and was received in the Clerk of Court's office on November 20, 2006. See id. Due to the November 17, 2006 postmark, such response was untimely. Notwithstanding, even if timely, such response does not serve as an answer to the complaint filed against the Defendants.<sup>1</sup> To date, neither of the Defendants have filed an answer.

Due to Defendant Bobby A. McElwee's letters to the Court, it is clear that he is attempting to defend against the foreclosure proceeding. However, even if such letters are construed as an "appearance" under Federal Rule of Civil Procedure 55(b)(2), Defendants have received proper notice of the impending default judgment and have still not filed an

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<sup>1</sup>Later in November, Defendant Bobby A. McElwee again wrote a letter in response to the Motion for Default Judgment. See Record Document 12. The letter is dated November 26, 2006, postmarked November 25, 2006, and was received by the Clerk's Office on November 27, 2006. See id. This letter was also untimely opposition to the Motion for Default Judgment.

answer. On October 26, 2006, the record reflects that Defendants received notice, via United States mail, of the Motion for Default Judgment filed by the Plaintiff. See Record Document 8, Notice of Electronic Filing. Likewise, on November 1, 2006, the record reflects that Defendants received notice, via United States mail, of the Notice of Motion Setting pertaining to the Motion for Default Judgment. See Record Document 9, Notice of Electronic Filing. Despite this actual notice of the impending default judgment, Defendants failed to answer the complaint filed against them. Therefore, default judgment is appropriate. See generally Charlton L. Davis & Co., P.C. v. Fedder Data Center, Inc., 556 F.2d 308 (5th Cir. 1977).

Accordingly,

**IT IS ORDERED** that there be judgment in rem in favor of Plaintiff, the United States of America, and against Defendants, Bobby A. McElwee and Minnie Carol Cason McElwee, jointly, severally and in solido, in accordance with the Judgment in Rem that will issue with the instant Memorandum Ruling.

**THUS DONE AND SIGNED** in Shreveport, Louisiana, this 20<sup>th</sup> day of December, 2006.

  
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S. MAURICE HICKS, JR.  
UNITED STATES DISTRICT JUDGE